

(27,137)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 385.

MICHAEL F. MANGAN, ADMINISTRATOR OF MARY E.
PILLOW, DECEASED, APPELLANT,

VS.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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I. *Petition.*

Filed October 1, 1912.

Court of Claims.

No. 31,905.

MARY ELIZA PILLOW, Claimant,

VS.

THE UNITED STATES.

To the Chief Justice and Judges of the Court of Claims:

The petition of Mary Eliza Pillow respectfully represents:

I.

That she is a citizen of the United States, having been born in the State of Louisiana, and is now a resident of the City of Washington, in the District of Columbia.

II.

That her maiden name was Mary Eliza Dickson, and that on the — of June, 1863, she intermarried with James B. Trigg, who departed this life on the 6th day of June, 1866, and that on the 27th day of November, 1872, she intermarried with Gideon J. Pillow, and that he departed this life on the 9th day of October, 1878.

III.

That in September, 1865, she purchased with funds belonging to her sole and separate estate, through her agent, James B. Trigg, her first husband, of I. H. Hamiter, of Lafayette County, Arkansas, seventy-five bales of cotton, paying for the same \$7,000.00 and upwards, which cotton was delivered to her on the Red River, near Shreveport, Louisiana; that said bales would average 500 pounds to the bale.

IV.

That while said cotton was on Red River aforesaid, it, together with other cotton, was seized by the United States as the property of said Hamiter, or Hamiter & Obenchain, and shipped to New York, about October 25, 1865, and sold 160 bales thereof, realizing \$13,050.62, which sum was turned into the Treasury of the United States as net proceeds thereof.

V.

That while said proceeds were in the Treasury, the said Hamiter, on June 1, 1874, by his attorney, T. A. Flanigan, acknowledged and released any claim to the proceeds of said seventy bales in favor of claimant, and said proceeds still remain in the United States Treasury.

VI.

The premises considered, the claimant prays judgment against the United States for the sum of \$5,709.62, being at the rate of
 3 \$81.56 per bale, the average price of said lot of 160 bales.

MARY E. PILLOW.

Petitioner.

JOHN C. FAY,

Attorney for Claimant.

DISTRICT OF COLUMBIA, ss:

Mary Eliza Pillow, being duly sworn, says that she has read the foregoing petition and knows the contents thereof; that the matters therein stated of her own knowledge are true, and those stated on information she believes to be true; that no assignment or transfer of said claim has been made, and that she at all times has borne true faith and allegiance to the United States, and has not in any way voluntarily aided, abetted or given encouragement to the rebellion against the Government of the United States.

MARY E. PILLOW.

Sworn and subscribed to before me this 1st day of May, A. D. 1911.

JOHN T. BIVINS,

[SEAL.]

Notary Public.

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II. General Traverse.

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendants, a general traverse is entered as provided by Rule 34.

III. History of Proceedings.

On December 24, 1917, Michael F. Mangan, administrator, was substituted claimant by the court, on motion made therefor.

On December 24, 1917, John S. Blair was substituted as attorney of record in place of John C. Fay, deceased, on motion made therefor.

5 IV. *Argument and Submission of Case.*

On January 7, 1919, the case was argued and submitted on merits by Mr. John S. Blair, for the claimant, and submitted without argument by Mr. William F. Norris, for the defendants.

V. *Findings of Fact and Conclusion of Law.*

Entered February 8, 1919.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of Fact.

I.

In October 1865, seventy bales of cotton claimed to have belonged to the plaintiff's decedent, Mrs. Mary E. Pillow, then Mrs. Mary E. Trigg, were seized near Shreveport, Louisiana, by United States Treasury agents, acting under authority of the Act of March 12, 1863, known as the Abandoned and Captured Property Act. The cotton was seized and subsequently sold by said agents as being the property of the Confederate States Government. The net proceeds realized from the sale of the cotton amounted to \$3,590.47, which was paid into the United States Treasury.

II.

Said cotton originally belonged to one John H. Hamiter of Lafayette County, Arkansas, by whom it, together with 105 bales of other cotton, was sold on or about January 23, 1863, to the Confederate States Government upon terms, as stated in the bill of sale signed by said Hamiter, as follows:

6 "The undersigned having sold to the Confederate States of America, and received the value of same in bonds, the receipt whereof is hereby acknowledged, 175 bales of cotton, marked, numbered and classed as in the margin, which is now deposited at my plantation, hereby agrees to take due care of said cotton whilst on his plantation, and to deliver the same as his own expense at Conway, on Red River, in the State of Arkansas, to the order of the Secretary of the Treasury, or his agents or their assigns."

The Confederate bonds in payment for the cotton were not in fact paid over to said Hamiter, as recited in the bill of sale, because of the purchasing agent's shortage of bonds at the time and for some time thereafter. Some five or six months later Hamiter served on said agent demand for the bonds, with notice that if they were not paid over to him he would consider and treat the transaction as

rescinded. Delivery of the bonds to him was not made upon this demand for the reason that the agent had not yet received bonds with which to make the payment, and no payment appears ever to have been made by the Confederate Government for the cotton.

The said James H. Hamiter thereafter sold this cotton to his father, who held it until his death not long thereafter; and in or about September 1865 the said Hamiter, as administrator or other agent of his father's estate, sold the cotton to the plaintiff's decedent, Mrs. Pillow, then Mrs. Trigg, by whom it had been hauled down to Red River, opposite Shreveport, for shipment to market, at the time of its seizure by the United States Treasury agents.

After the seizure of the cotton by the United States Treasury agents, the decedent tried to secure its release to her; and failing in this demanded of said Hamiter that he refund to her the purchase price she had paid him for the cotton. This he at first refused to do, but finally, upon fear of threatened arrest and punishment for his transactions in connections with the cotton, he consented to do so, and not having the money at the time gave a promissory note to the decedent for the amount, and thereafter filed a claim for the cotton, which was disallowed. Subsequently, Hamiter having failed to pay his note to the decedent for return of the purchase price in his sale of the cotton to her, decedent brought suit against him on the note, in which suit he set up the defense of duress. It does not satisfactorily appear what was the result of this suit.

Thereafter, in March, 1873, the decedent brought suit in this court, docket number 7151, for the recovery of the proceeds of the sale by the United States of said cotton, which suit was dismissed on defendants' plea to the jurisdiction.

Conclusion of Law.

Upon the foregoing findings of fact the court decides as a conclusion of law that the plaintiff is not entitled to recover and his petition should be and the same is hereby dismissed.

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VI. Judgment of the Court.

At a Court of Claims held in the City of Washington on the Third day of February, A. D., 1910, judgment was ordered to be entered as follows:

The Court, upon due consideration of the premises find in favor of the defendants, and do order, adjudge and decree that Michael F. Mangan, administrator of Mary E. Pillow, deceased, as aforesaid, is not entitled to recover and shall not have and recover any sum in this action of and from the defendants, the United States; and that the petition be and the same is hereby dismissed.

BY THE COURT.

VII. *Claimant's Application for, and Allowance of, an Appeal to the Supreme Court.*

From the judgment rendered in the above entitled cause on the 3d day of February 1919, in favor of the defendants, the claimant by his attorney, on the 30th day of April, 1919, makes application for, and gives notice of, an appeal to the Supreme Court of the United States.

JOHN S. BLAIR,
Attorney for Claimant.

Filed April 30, 1919.

Ordered:

That the above appeal be allowed as prayed for.
May 5, 1919.

BY THE COURT.

9

Court of Claims.

No. 31,905.

MICHAEL F. MANGAN, Administrator of Mary E. Pillow, Deceased,

VS.

THE UNITED STATES.

I, Sam'l A. Putman, Chief Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact and conclusion of law filed by the court; of the judgment of the court; of the claimant's application for, and the allowance of, an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City this Twenty-sixth day of May, A. D., 1919.

[Seal Court of Claims.]

SAM'L A. PUTMAN,
Chief Clerk Court of Claims.

Endorsed on cover: File No. 27,137. Court of Claims. Term No. 385. Michael F. Mangan, administrator of Mary E. Pillow, deceased, appellant, vs. The United States. Filed May 28th, 1919. File No. 27,137.



FILED

OCT 2 1920

JAMES D. BAKER,
CLERK.

IN THE
Supreme Court of the United States

October Term, 1920.

No. 112.

MICHAEL F. MANGAN, ADMINISTRATOR OF ESTATE OF
MARY E. PILLOW, DECEASED,
Appellant,

v.

THE UNITED STATES,
Appellee.

APPELLANT'S BRIEF.

JOHN S. BLAIR,
IDA M. MOTER,
CHAR. F. CONRAUL,
Attorneys for Appellant.



IN THE
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MICHAEL F. MANGAN, ADMINISTRATOR OF ESTATE OF
MARY E. PILLOW, DECEASED,
Appellant,

v.
THE UNITED STATES,
Appellee.

APPELLANT'S BRIEF.

STATEMENT OF CASE.

On appeal from judgment of the Court of Claims dismissing plaintiff's petition.

The Findings of Fact made by the court below are found on pp. 3-4 of the record. Without here quoting them, they are substantially as follows, stated chronologically:

The 70 bales of cotton in suit originally belonged to John H. Hamiter. On January 23, 1863, he executed a bill of sale to the Confederacy, *prima facie* evidencing the sale thereof and of other cotton, for an agreed price, payable in bonds of the Confederacy acknowledging receipt of such bonds, and agreeing to deliver the cotton on the order of the Confederate Treasury officials.

As a fact, the bonds receipted for were *not* delivered to Hamiter, as the local officials did not have any to deliver. After waiting for some months for his bonds, Hamiter demanded delivery of the bonds, with notice that unless the bonds were delivered to him he would treat the contract of sale as rescinded.

No delivery of bonds was made and it does not appear that any consideration was ever paid by the Confederacy for the cotton.

Treating the sale contract as abrogated, Hamiter thereafter sold the cotton to his father, who held it until his death, not long after.

Thereafter, about September, 1865, the estate of the father acting by said J. H. Hamiter, administrator or agent, sold 70 bales of the cotton to Mrs. Pillow (then Mrs. Trigg), evidently for cash, and she caused the cotton to be hauled to the Red River, Louisiana, near Shreveport, for shipment to market.

The 70 bales were there seized by Federal Treasury agents, evidently on the theory that they belonged to the Confederacy, and were later sold and the net proceeds (\$3,590.47) were covered into the U. S. Treasury, where they now are.

After said seizure, Mrs. Pillow demanded of Hamiter the return of her purchase money, and he finally gave her his promissory note therefor. He failed to

pay the note and she sued thereon, and the result of the suit has not been satisfactorily established.

The Court of Claims, on the findings made, dismissed the petition of the Pillow estate. As no opinion was filed, the reasons for the judgment are left a matter of inference.

Appellant moved in this court for a remand of the case for additional findings of fact, which motion has been denied.

These being the facts of the case, we shall discuss

"ASSIGNMENTS OF ERROR.

Appellant assigns error in the conclusions of law and judgment of the Court of Claims as follows:

(1). Upon the facts found, judgment should have been entered for plaintiff.

(2). *If* the petition was dismissed on the theory that the cotton seized was subject to seizure as Confederate property, that was error.

(3). *If* the petition was dismissed on the theory that Mrs. Pillow had divested herself of her claim against the Government, that was error."

the vendee of personal property (emphasis ours).

"He is entitled to the goods *on payment or tender of the price, and not otherwise*, when nothing is said at the sale as to the time of delivery, or the time of payment. But if the goods are sold on credit, and nothing is agreed upon as to the time of delivering the goods, the vendee is immediately entitled to the possession, and the right of property vests."

In *U. S. v. Woodruff*, 22 Wall., 180, this court said, in dealing with the same general subject:

"We have already noticed that no sale upon credit was intended. There was, therefore, no reason why the vendor should part with anything before the purchase money was paid or tendered."

Tiedeman on Sales, Sec., 85, says:

"Where the sale is a cash transaction, the parties are presumed to require prepayment of the price before there is to be any transfer of title or possession."

See, also: Benjamin on Sales (5th ed.), p. 579; Parsons on Contracts, Vol. 1, marginal p. 526.

In view of the authorities cited, and of the fact found that the consideration never passed from the Confederacy to Hamiter under the contract of sale, and of Hamiter's action in rescinding the contract for failure of the other party to pay the purchase price, it is plain that title to the cotton never passed from Hamiter to the Confederacy.

Hence it was Hamiter's property when he sold it to his father, and was the property of the estate of the senior Hamiter when it was sold to Mrs. Pillow (then Trigg). The attempted sale to the Confederacy may therefore be set aside as wholly immaterial to decision of this case.

MRS. PILLOW (TRIGG) WAS OWNER OF COTTON AT TIME OF SEIZURE.

The finding of the Court of Claims is that the 70 bales of cotton in suit were sold to Mrs. Pillow, and that she had it hauled to Red River. That shows both purchase by her and the fact that she took possession of the cotton. Having thus bought it and being in possession at date of its seizure, she was obviously the owner. It was her property when seized by federal authority, and her estate is therefore the proper claimant.

This suit is brought under Sec. 162, Judicial Code providing that (emphasis ours):

"The Court of Claims shall have jurisdiction to hear and determine the claims of *those whose property was taken* subsequent to June the first, eighteen hundred and sixty-five, under the provisions of the Act of Congress approved March twelfth, eighteen hundred and sixty-three, * * *"

The original Abandoned and Captured Property Act is that mentioned above (12 Stats., 820).

In light of the facts, Mrs. Pillow was the person "*whose property was taken*," and her estate is the one entitled to judgment for the net proceeds, unless Mrs. Pillow did some act after the seizure of her cotton which operated to divest her of her legal claim against the Government.

The later occurrences, set forth in the findings, are that after the seizure Mrs. Pillow demanded of Hamiter the return of the purchase price paid by her; that Hamiter gave her his promisory note, and that he thereafter declined to pay the note, and that Mrs. Pillow sued on the note, and that the result of the litiga-

tion has not been satisfactorily established; also that Hamiter brought suit for the proceeds of the cotton and that his suit was dismissed by the Court of Claims.

It also appears, as set forth in the brief accompanying appellant's motion to remand the case, that Hamiter presented his claim directly to Congress, covering this cotton and other cotton, and that after passage of a bill making an appropriation for payment of his claim, and while the bill was in the hands of the President, the Acting Attorney General brought to the attention of the Chairman of the Claims Committee of the Senate, the fact that *Hamiter had relinquished or waived his claim to the extent of the 70 bales sold by him to Mrs. Pillow*, and that on this showing, the bill was recalled by Senate Resolution (Congressional Record, 60th Congress, 2d Session of Feb. 17, 1909, pp. 2620 to 2622).

After the seizure and sale of the 70 bales of cotton Mrs. Pillow had a valid claim against the United States.

No fact has been reported or found, that would de-vest her of such claim. There is no intimation in the findings that she ever attempted to assign or transfer any such claim. If she had a valid claim originally, and if it was not thereafter assigned, either by act of Mrs. Pillow or by operation of law, then the right to recover is still vested in Mrs. Pillow's estate, which is the present claimant.

This cotton, not having been at any time the property of the Confederacy, was not legally subject to seizure and sale. Hence, the net proceeds are held *in trust* by the Government for the person "*whose property was taken.*" (U. S. v. Klein, 13 Wall., 128; U. S. v. Padel-ford, 9 Wall., 531, 543).

The case of *U. S. v. American Tobacco Co.*, 166 U. S., 468, is in point. In that case the Tobacco Company had on hand internal revenue stamps to be placed on packages of tobacco prior to sale. Its factory burned with all contents, including said stamps. The property was insured and the insurers paid the company under the policies, the payments so made covering the value of the stamps mentioned.

The Tobacco Company applied to the Treasury Department for a refund of the value of the stamps. Refund was denied because the company had been indemnified by the insurers. Suit was brought in the Court of Claims, judgment was entered for the company, and on appeal to this court, that judgment was affirmed, it being held that the rights of the insurers to later recover from the Tobacco Company whatever refund might be secured from the Government did not affect the validity of the claim of the company *against the Government*.

In so deciding, this court used the following language:

"Unless, therefore, the government repaid the value of the stamps so destroyed, or provided other stamps in lieu thereof without any further payment, the government would be in the position of one who retained money to which it had no equitable right. It would be no answer to that fact to show that some other person had reimbursed the claimant the amount it had paid for the stamps. That would not alter the position of the government."

Applying the same principle here, even had the court below found as a fact that Mrs. Pillow has actually col-

lected the promissory note given her by Hamiter (which is not found) yet that fact would not here bar recovery by Mrs. Pillow's estate, and would not relieve the government from *its* duty to pay her estate the fund now held in trust for the person "*whose property was taken.*"

It might be true that, upon collection of this trust fund by the person legally entitled thereto, if Hamiter's legal representatives could show repayment by Hamiter to Mrs. Pillow of the purchase price represented by said promissory note, the Hamiter estate might have an equitable claim against the Pillow estate on any money collected on this claim. We do not say that such would be the case, but even were it true, that would be purely a private matter, with which the Government would have no concern.

NO VOLUNTARY ACT OF MRS. PILLOW, AFTER SEIZURE OF HER COTTON, COULD TRANSFER HER CLAIM AGAINST THE GOVERNMENT TO ANY OTHER PERSON. HENCE THE LITIGATION WITH HAMITER AFTER SAID SEIZURE IS WHOLLY IMMATERIAL.

Sec. 3477, U. S. R. S., expressly prohibits the assignment or transfer of claims against the Government prior to issuance of warrant in payment of the claim.

In *U. S. v. Gillis*, 95 U. S., 407, a similar claim was involved, for proceeds of cotton seized and sold. The cotton at time of seizure belonged to Ryan, who later attempted to assign his claim to Gillis. Suit was brought by Gillis.

It was held by this court that in the face of Sec. 3477, U. S. R. S., and of the terms of the Captured and Abandoned Property Act (12 Stat., 320), it was impos-

sible for Ryan to assign the claim by his voluntary act, and that *suit* under the Captured and Property Act *must be brought by the person whose property was taken*. In considering the last mentioned Act, the court said:

"It is thus plain that only he who can claim as owner of the property captured or abandoned and who can prove such ownership, is permitted to sue and recover."

In the instant case, it is not found that Mrs. Pillow ever voluntarily assigned her claim against the Government. Assuredly the facts found as to her having demanded of Hamiter repayment of the money paid by her for the Hamiter cotton, and of his having given his promissory note therefor, no evidence being adduced as to whether that note was ever paid, fall far short of showing even an attempt on part of Mrs. Pillow to assign her claim to Hamiter.

Certainly Hamiter evidenced by his act shown by the Congressional Record hereinabove referred to, that he did not deem himself the owner of the Pillow claim by assignment, as he expressly disclaimed any such interest.

It is therefore clear that the facts found by the Court of Claims as to the controversy and litigation which occurred after the seizure of this cotton, between Mrs. Pillow and Hamiter, are utterly immaterial and irrelevant.

The material facts are that cotton belonging to Mrs. Pillow was seized and sold, and that the proceeds thereof are still in the Treasury.

CONCLUSION.

As decided by this court in the Klein and Padelford cases (13 Wall., 128; 9 Wall., 531), the Government holds this money in trust for some one. The statute says it shall be repaid to the person "whose property was taken." Yet the Government is here contending that the money shall not be paid to the Pillow estate. and in the proceeding before Congress, above mentioned, in dealing with the claim of Hamiter, has taken the position that Hamiter should not be paid, either.

We have the Government, therefore, as suggested by this court in the American Tobacco Company case (*supra*), in the position of "one who retains money to which it has no equitable right," a trustee declining to pay out the trust fund to *any one*. In short, the Government is using, alternately, each of these two persons Hamiter and Mrs. Pillow, as a shield against the demand of the other, which assuredly does not seem consistent with good faith and fair dealing between the Government and its citizens.

Here is a trust fund. Will this court lend its aid to permit the trustee to forever retain possession of the fund? There is no room for doubt but that Mrs. Pillow owned the cotton when it was seized, and that her estate, under the statute, is the proper person to recover the trust fund. Aside from that, Hamiter has already disclaimed any interest in this fund, and because of that disclaimer, the Government has refused to pay it to him, even by direct appropriation.

Respectfully submitted,

JOHN S. BLAIR,

IDA M. MOTERS,

CHAR. F. CONSAUL,

Attorneys for Appellant.

IN THE
Supreme Court of the United States

October Term, 1919.

No. 385.

MICHAEL F. MANGAN, Administrator of Estate of Mary
E. Pillow, Deceased, *Appellant*,
v.
THE UNITED STATES, *Appellee*.

MOTION

**OF APPELLANT TO REMAND CASE TO THE
COURT OF CLAIMS FOR ADDITIONAL FIND-
INGS OF FACT, WITH BRIEF IN SUPPORT
OF MOTION.**

Come now appellant, and respectfully moves that
this cause be remanded (under authority of United
States v. Child, 9 Wall., 661), with instructions to the
Court of Claims to find and certify to this Court, as

matters of fact, in addition to the facts found and certified in the record of this cause:

1. Whether or not John H. Hamiter did present to the United States government a claim for the proceeds of seventy bales of cotton described in findings of fact heretofore made as sold by him to claimant's decedent, Mary E. Pillow (formerly Trigg), and if so:

2. Whether or not said Hamiter, acting by his attorney, relinquished, waived or abandoned his said claim to said seventy bales of cotton, by filing in the United States Treasury Department a paper, reading in words and figures substantially as follows, to-wit:

Washington, D. C.

In view of the fact that there seems to be conflicting claims for the 70 bales of cotton sold by John H. Hamiter to Trigg & King, Boshier Parish, La., or to Mrs. M. E. Trigg (now wife of G. J. Pillow), as mentioned in the foregoing affidavit, I, as attorney for John H. Hamiter, do hereby relinquish all claim to the Trigg cotton as aforesaid as being a portion of the cotton claimed by J. H. Hamiter, in his claim for 180 bales filed before the Secretary of the Treasury under act of May 18, 1872.

June 1, 1874.

T. A. FLANAGAN, *Attorney.*

Respectfully submitted,

JOHN S. BLAIR,

IDA M. MOYERS,

CHARLES F. CONSAUL,

Attorneys for Appellant.

BRIEF.

In support of this motion to remand the case to the Court of Claims, for additional findings of fact, appellant respectfully shows to the Court:

1. That this claim is for \$3,590.47, now in the U. S. Treasury, and resulting from the seizure and sale of 70 bales of cotton, after June 1, 1865.

2. That said cotton originally belonged to John H. Hamiter, and said Hamiter executed a bill of sale of same to the Confederate States Government, in recited consideration of bonds of said government. Said bonds were never delivered to him in fact, and he therefore expressly notified the agent of said government of the abrogation of the agreement of sale. The cotton had meanwhile been retained in possession of Hamiter, and he thereafter sold same to Mrs. Mary E. Trigg (later Mrs. Pillow).

3. Said cotton was subsequently seized by U. S. Treasury agents while in possession of Mrs. Pillow, on the theory that it belonged to the Confederate government; it was thereafter sold, and the net proceeds now in the Treasury are \$3,590.47.

4. After seizure of said cotton, Mrs. Pillow demanded return by Hamiter of the purchase money paid by her. Hamiter in lieu of making repayment, gave Mrs. Pillow his promissory note, and later litigation ensued on said note, and the Court of Claims finds that the result of said litigation does not satisfactorily appear. (Finding II, Rec., p. 4.)

Upon these facts the Court of Claims dismissed the petition, without any opinion. From the nature of the case, and of the findings of fact, however, it would appear that the suit must have been dismissed because

of doubt as to whether or not Mrs. Pillow had secured repayment of the purchase money paid by her for said cotton, and on the theory that if she had been repaid the purchase money, then she could not maintain this suit.

We state this theory as it would seem the only one on which the suit could have been dismissed. The same theory, carried one logical step further, would lead to the conclusion that *Hamiter*, the original owner of the cotton, must be the proper one to demand payment of said money in the Treasury. In short, the Court of Claims apparently dismissed the suit because of the possibility that Hamiter might make and establish a claim to the same fund, although he is not before the Court of Claims with any such claim, and the time for filing suit under Sec. 162 of the Judicial Code has expired.

Claimant requested the Court of Claims to find that said Hamiter *abandoned* his claim for the fund arising from sale of this cotton, and embodied that request in a formal motion to amend the findings of fact; but the motion was overruled.

The materiality of the fact which we seek to have covered by additional findings is plain. On the facts already found by the Court below, it is at least left subject to inference that Mrs. Pillow rescinded her contract with Hamiter, whereby she acquired title to the cotton in question, and that as an incident to rescission she secured a return of the purchase price paid by her, in which event title to the cotton involved would have been considered as passing back to Hamiter.

If, however, as we know to be a fact, Hamiter thereafter waived any claim he might have had against the Government, on account of this cotton, then it follows

that *he disclaimed any title to this cotton*. That being so, and as title must have been vested *either in Hamiter or Mrs. Pillow*, it follows that the title must have stood in Mrs. Pillow and her estate is entitled to a judgment for the net proceeds of that cotton, now in the Treasury.

In short, the fact concerning which appellant asks the additional finding, will show the immateriality of certain other facts already found by the Court of Claims, and which other facts, on the face of the findings, are such as to at least cast a doubt on Mrs. Pillow's title.

We believe that we are not transcending the bounds of propriety, in view of the circumstances here present, by calling to the attention of this Court a matter of public record, having a most material bearing on this case as now presented.

HAMITERS'S CLAIM BEFORE CONGRESS.

Reference is made to the Congressional Record of the 60th Congress, 2d Session, of February 17, 1909, pages 2620 to 2622. From said proceedings and from the Record of earlier dates (Feb. 5 and 10, 1909, pages 1947 and 2191), it appears that said Hamiter presented a claim to Congress, covering said sum here involved, and that after passage of a bill making the appropriation, and while the bill was in the hands of the President, the Acting Attorney General brought to the attention of the Chairman of the Claims Committee of the Senate the fact that Hamiter had relinquished his claim to the extent of the proceeds from sale of said 70 bales of cotton, and on that showing, the appropriation bill was recalled by Senate Resolution after it had been sent to the President for approval.

Submitted to Congress with the letter of the Acting Attorney General was a copy of Hamiter's waiver quoted in the above motion to remand. A certified copy of the same paper forms a part of the record of this case in the Court of Claims, but as the evidence in that court does not come before this Court, on appeal, appellant has no means of making use of said paper in this Court save as basis for this motion.

In short, the Department of Justice in the Hamiter case, induced Congress to refrain from paying Hamiter this sum *because Hamiter had waived or relinquished it (evidently in favor of Mrs. Pillow)* while in the instant case the *Court of Claims denies judgment to the estate of Mrs. Pillow because Hamiter might have some claim to the same fund.*

Had the Court of Claims found as a fact that Hamiter had thus relinquished his claim to the proceeds of these 70 bales of cotton, we would confidently look to this Court for a reversal of the judgment dismissing the suit, but the failure of the Court below to make this finding leaves claimant in this Court without the support of this very material fact.

While we believe the judgment should be reversed in any event, and on other grounds, yet we feel it is our duty to move that the case be remanded for findings on the point indicated, to the end that this Court may have before it all the material facts of the case.

Were the other party to this suit a private person or corporation, we think its position would meet reprobation by this Court, in that the defendant obviously holds this fund in trust for *some one*, and yet thus far the Government has defeated the claim of the original owner, Hamiter, because he relinquished any claim he had to this fund; and in the present case the Govern-

ment has apparently defeated *Mrs. Pillow's* estate because of the possible claim of *Hamiter*. In short, the Government is in the position of using alternately, each of these persons as a shield against the demand of the other, which procedure would seem unconscionable on its face.

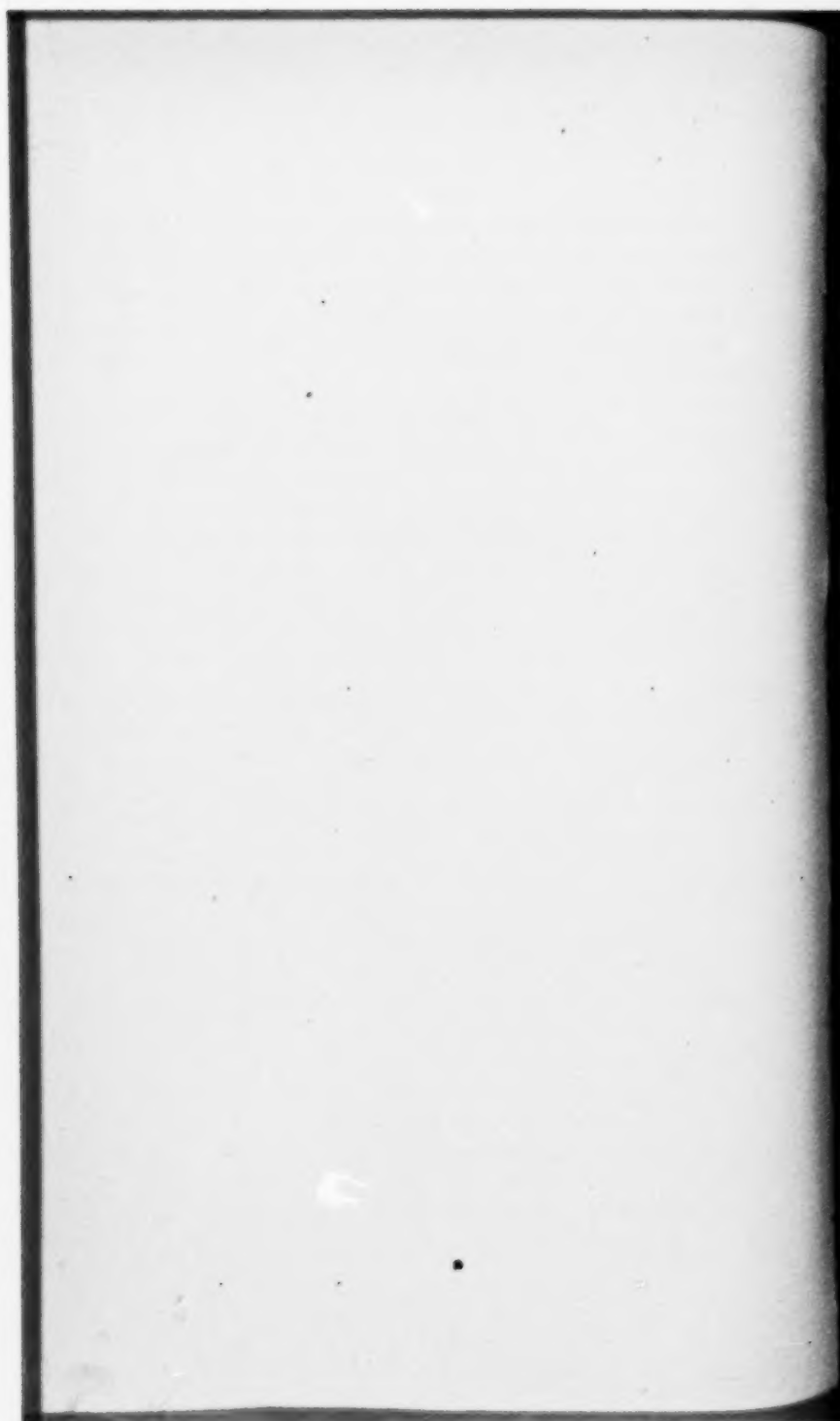
Respectfully submitted,

JOHN S. BLAIR,

IDA M. MOYERS,

CHAS. F. CONSAUL,

Attorneys for Appellant.



In the Supreme Court of the United States.

OCTOBER TERM, 1919.

MICHAEL F. MANGAN, ADMINISTRATOR OF Mary E. Pillow, deceased, appellant, v. THE UNITED STATES, APPELLEE.	}	No. 385.
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APPEAL FROM THE COURT OF CLAIMS.

**BRIEF FOR THE UNITED STATES IN OPPOSITION TO
APPELLANT'S MOTION TO REMAND THE CASE TO
THE COURT OF CLAIMS FOR ADDITIONAL FIND-
INGS OF FACT.**

STATEMENT.

The action in the Court of Claims was brought under section 162 of the Judicial Code for the net proceeds of 70 bales of cotton alleged to have belonged to Mary E. Pillow, from whom it was taken by United States Treasury agents, sold, and the net proceeds, amounting to \$3,590.47, placed in the United States Treasury.

The Court of Claims, after a general statement of the case in its first finding of fact, states the material facts in its second finding as follows:

II.

Said cotton originally belonged to one John H. Hamiter, of Lafayette County, Arkansas,

by whom it, together with 105 bales of other cotton, was sold on or about January 23, 1863, to the Confederate States Government upon terms, as stated in the bill of sale signed by said Hamiter, as follows:

"The undersigned, having sold to the Confederate States of America and received the value of same in bonds, the receipt whereof is hereby acknowledged, 175 bales of cotton, marked, numbered, and classed as in the margin, which is now deposited at my plantation, hereby agrees to take due care of said cotton whilst on his plantation, and to deliver the same *as* his own expense at Conway, on Red River, in the State of Arkansas, to the order of the Secretary of the Treasury or his agents or their assigns."

The Confederate bonds in payment for the cotton were not in fact paid over to said Hamiter as recited in the bill of sale, because of the purchasing agent's shortage of bonds at the time and for some time thereafter. Some five or six months later said Hamiter served on said agent demand for the bonds, with notice that if they were not paid over to him he would consider and treat the transaction *as* rescinded. Delivery of the bonds to him was not made upon this demand, for the reason that the agent had not yet received bonds with which to make the payment, and no payment appears ever to have been made by the Confederate Government for the cotton.

The said James H. Hamiter thereafter sold this cotton to his father, who held it until his death not long thereafter, and in or about

September, 1865, the said Hamiter, as administrator or other agent of his father's estate, sold the cotton to the plaintiff's decedent, Mrs. Pillow, then Mrs. Trigg, by whom it had been hauled down to Red River opposite Shreveport for shipment to market at the time of its seizure by the United States Treasury agents.

After the seizure of the cotton by the United States Treasury agents, the decedent tried to secure its release to her; and failing in this demanded of said Hamiter that he refund to her the purchase price she had paid him for the cotton. This he at first refused to do, but finally, upon fear of threatened arrest and punishment for his transactions in connection with the cotton, he consented to do so, and not having the money at the time gave a promissory note to the decedent for the amount, and thereafter filed a claim for the cotton, which was disallowed. Subsequently, Hamiter having failed to pay his note to the decedent for return of the purchase price in his sale of the cotton to her, decedent brought suit against him on the note, in which suit he set up the defense of duress. It does not satisfactorily appear what was the result of this suit.

Thereafter, in March, 1873, the decedent brought suit in this court, docket number 7151, for the recovery of the proceeds of the sale by the United States of said cotton, which suit was dismissed on defendant's plea to the jurisdiction.

ARGUMENT.

The additional findings requested are, in substance, that Hamiter presented a claim for this cotton to the Government and that subsequently, through his attorneys, he relinquished this claim. The Court of Claims has found (Finding II, Rec. p. 4) that Mrs. Pillow, after the cotton was taken from her, demanded from Hamiter that he refund to her the purchase price, that he gave her promissory notes for this purpose and thereafter "filed a claim for the cotton, which was disallowed." The Court of Claims has therefore made a finding on the subject of the presentation of the claim by Hamiter and this finding is conclusive.

The additional findings requested, namely, the copy of the purported release by Hamiter, is immaterial. It shows, at most, a controversy as to the ownership of the cotton, and is not a release to Mrs. Pillow or to anyone else; it is simply a release of a claim against the Government theretofore asserted.

The vital fact for claimant to establish is an ownership of the cotton sufficient to recover under the act; this can not be established by showing that Hamiter filed a claim against the Government and then withdrew it. Whatever inference might be drawn from such finding can be drawn as well from the finding the Court of Claims has already made, namely, that Hamiter filed a claim which was denied. The facts upon which the case depends have been found; these are the sale to the Confederate Government, the sub-

sequent attempted sale to Mrs. Pillow, and the demand by her, which was complied with, that the purchase price be refunded.

The requested findings would add nothing material to the positive findings referred to; neither would they form the basis for any conclusion of law.

It is therefore respectfully submitted that the motion to remand should be overruled.

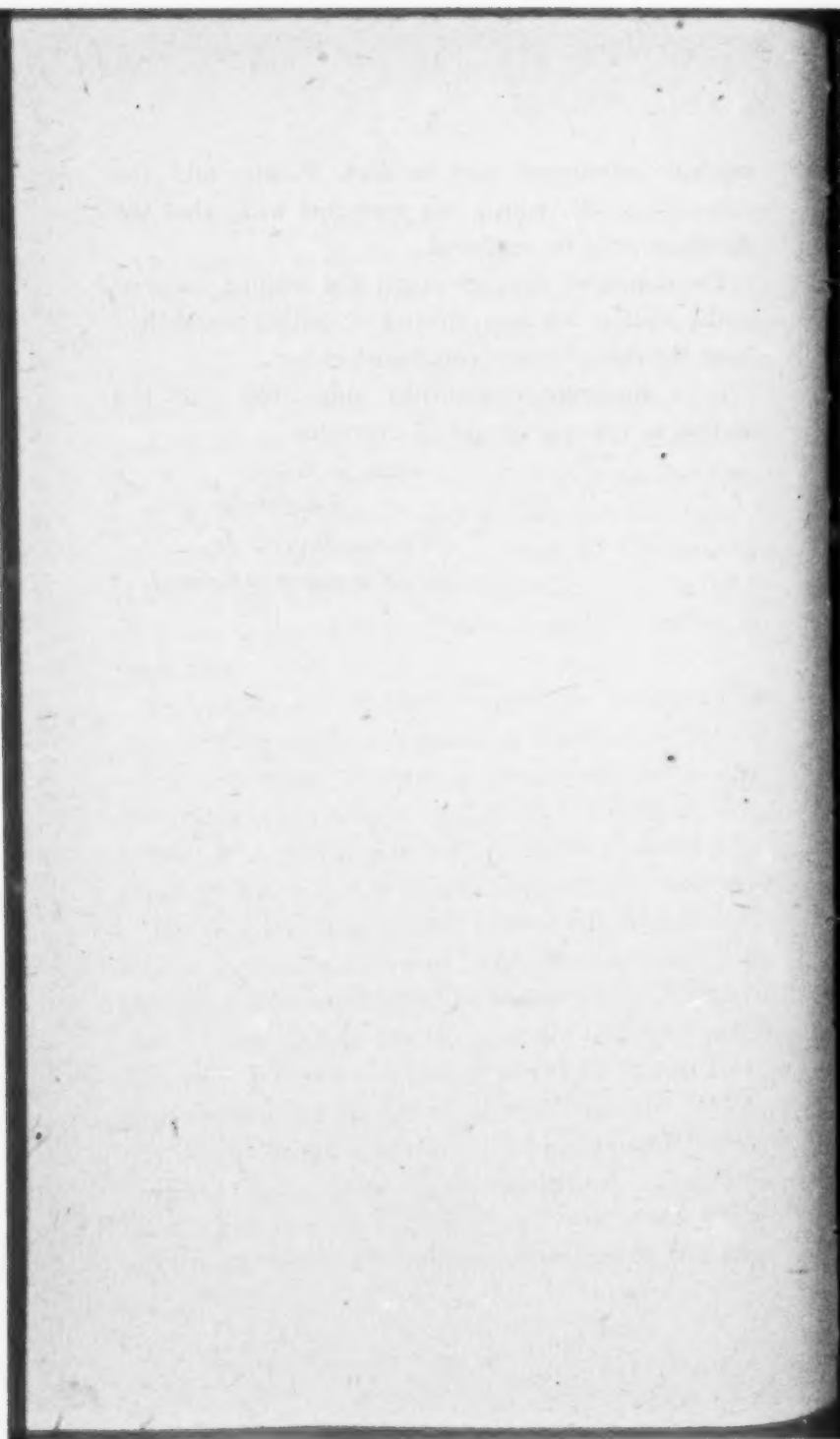
ALEX. C. KING,

Solicitor General.

FRANK DAVIS, Jr.,

Assistant Attorney General.

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In the Supreme Court of the United States.

OCTOBER TERM, 1920.

MICHAEL F. MANGAN, ADMINISTRATOR OF Mary E. Pillow, deceased, appellant, v. THE UNITED STATES.	} No. 112.
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APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The action in the Court of Claims was brought under section 162 of the Judicial Code for the net proceeds of 70 bales of cotton alleged to have belonged to Mary E. Pillow, taken by United States Treasury agents, sold, and the net proceeds, amounting to \$3,590.47, placed in the United States Treasury.

The facts, as found by the Court of Claims, are as follows (Rec. 3-4):

I.

In October, 1865, seventy bales of cotton claimed to have belonged to the plaintiff's decedent, Mrs. Mary E. Pillow, then Mrs. Mary E. Trigg, were seized near Shreve-

port, Louisiana, by United States Treasury agents, acting under authority of the act of March 12, 1863, known as the abandoned and captured property act. The cotton was seized and subsequently sold by said agents as being the property of the Confederate States Government. The net proceeds realized from the sale of the cotton amounted to \$3,590.47, which was paid into the United States Treasury.

II.

Said cotton originally belonged to one John H. Hamiter, of Lafayette County, Arkansas, by whom it, together with 105 bales of other cotton, was sold on or about January 23, 1863, to the Confederate States Government upon terms, as stated in the bill of sale signed by said Hamiter, as follows:

"The undersigned having sold to the Confederate States of America, and received the value of same in bonds, the receipt whereof is hereby acknowledged, 175 bales of cotton, marked, numbered, and classed as in the margin, which is now deposited at my plantation, hereby agrees to take due care of said cotton whilst on his plantation, and to deliver the same as [at] his own expense at Conway, on Red River, in the State of Arkansas, to the order of the Secretary of the Treasury, or his agents or their assigns."

The Confederate bonds in payment for the cotton were not in fact paid over to said Hamitor, as recited in the bill of sale, because of the purchasing agent's shortage of

bonds at the time and for some time thereafter. Some five or six months later Hamiter served on said agent demand for the bonds, with notice that if they were not paid over to him he would consider and treat the transaction as rescinded. Delivery of the bonds to him was not made upon this demand for the reason that the agent had not yet received bonds with which to make the payment, and no payment appears ever to have been made by the Confederate Government for the cotton.

The said James H. Hamiter thereafter sold this cotton to his father, who held it until his death not long thereafter; and in or about September, 1865, the said Hamiter, as administrator or other agent of his father's estate, sold the cotton to the plaintiff's decedent, Mrs. Pillow, then Mrs. Trigg, by whom it had been hauled down to Red River, opposite Shreveport, for shipment to market, at the time of its seizure by the United States Treasury agents.

After the seizure of the cotton by the United States Treasury agents, the decedent tried to secure its release to her; and failing in this demanded of said Hamiter that he refund to her the purchase price she had paid him for the cotton. This he at first refused to do, but finally, upon fear of threatened arrest and punishment for his transactions in connection with the cotton, he consented to do so, and not having the money at the time gave a promissory note to the decedent for the amount, and thereafter filed

a claim for the cotton, which was disallowed. Subsequently, Hamiter having failed to pay his note to the decedent for return of the purchase price in his sale of the cotton to her, decedent brought suit against him on the note, in which suit he set up the defense of duress. It does not satisfactorily appear what was the result of this suit.

Thereafter, in March, 1873, the decedent brought suit in this court, docket number 7151, for the recovery of the proceeds of the sale by the United States of said cotton, which suit was dismissed on defendants' plea to the jurisdiction.

ARGUMENT.

The only question in the case is whether ownership of the cotton or the proceeds thereof by Mrs. Pillow, formerly Mrs. Trigg, has been so proven as to authorize a judgment against the United States in favor of her administrator.

Section 162, Judicial Code (Act of March 3, 1911, c. 231, section 162, 36 Stat. 1139), under which this action is brought, provides:

The Court of Claims shall have jurisdiction to hear and determine the claims of those whose property was taken subsequent to June the first, eighteen hundred and sixty-five, under the provisions of the Act of Congress approved March twelfth, eighteen hundred and sixty-three, entitled "An Act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within

the United States," and Acts amendatory thereof where the property so taken was sold and the net proceeds thereof were placed in the Treasury of the United States; and the Secretary of the Treasury shall return said net proceeds to the owners thereof, on the judgment of said court, and full jurisdiction is given to said court to adjudge said claims any statutes of limitations to the contrary notwithstanding.

Under this section the burden is placed upon a claimant to establish ownership of the property taken.

In *Bramhall v. United States*, 4 C. Cls. 51, 59, 60, it is stated:

In the case of *Margaret Bond* (2 C. Cls. R., p. 529), this court said, "we are to decide three things in this class of cases; first among which is that the claimant was the owner of the property seized and sold; failing in this essential feature, however strong the resemblance of other facts between this and any other case might be, the case would fail * * * that the evidence required of the ownership of the property is at least equal to that necessary to sustain an action of trespass or trover. The ownership must be a *bona fide* one, not collusive or colorable. The claimant seeking to recover the proceeds must show not only that he purchased the property, but he must satisfy us that he did so in the regular course of his business, and not in fraud of the act, or with a view of speculating upon the justice of the Government."

See also *Mahan v. United States*, 6 C. Cls. 331.

In *United States v. Gillis*, 95 U. S. 407, 417, it is stated:

It is thus plain that only he who can claim as an owner of the property captured or abandoned, *and who can prove such ownership*, is permitted to sue and recover.

It is apparent from the record in this case that the claimant has failed in proof of ownership of the cotton or ownership of the "net proceeds" thereof in the Treasury, for there is no finding of the fact of such essential ownership; nor, from the facts found, which are conclusive, does such ownership appear.

The history of the cotton, as shown by the findings, discloses only doubt, instead of certainty, as to who actually owned it. Hamiter owned it originally; he sold it to the Confederacy, and, if he could do so, rescinded the sale without the consent of the Confederacy; he then sold it to his father for a consideration and reason not expressed; then, "as administrator or other agent of his father's estate," for an unstated consideration he sold it to Mrs. Trigg; afterward, Mrs. Trigg rescinded the sale, the cotton having been seized as the property of the Confederacy and the Treasury officials having refused to release it to her upon her claim of ownership; then Hamiter again claimed to be owner of the cotton and entitled to the proceeds, which claim he subsequently abandoned.

The findings only show one fact definitely found; that is, that the cotton was seized as the property of the Confederacy, sold, and the proceeds paid into the Treasury. As both the demand of Mrs. Trigg for release of the cotton, and of Hamiter for the proceeds, were denied, it may be assumed that the Government still maintains that the cotton was the property of the Confederacy when it was seized; the facts found do not rebut this claim. If not the property of the Confederacy, then the facts found tend more strongly to establish ownership in Hamiter than in Mrs. Trigg. Granting, for the sake of argument, that the sale made to her was made in good faith, the contract of sale was rescinded upon her motion, and she demanded and received the return of her purchase money. That the return was in the form of a promissory note could make no difference, for she had elected to treat the transaction as one in which Hamiter held money, not cotton, due her, demanded the money, and, Hamiter being unable to pay cash, she accepted his note. Whether or not duress was practiced is immaterial, for, having obtained the recession which she demanded, she could not take advantage of her own act, the contract of sale having been rescinded by mutual consent so far as she was concerned; it is the same as if it had never been made; that is, as if she had never bought or purported to buy the cotton. Her claim in effect was that Hamiter held money due her, and this claim was recognized; necessarily Hamiter,

or his father's estate, regained or retained whatever ownership they had in the cotton.

Acting logically upon this understanding Hamiter made claim for the proceeds of the cotton, and Mrs. Trigg sued him upon his note. Then Hamiter having failed to pay the note and his claim for the proceeds of the cotton having been denied, the recession of the contract, the note, the claim, and the suit are all disregarded, and suit is brought by the administrator of Mrs. Trigg for the proceeds of the sale of the cotton. Her suit failed and must fail because she can not prove the ownership required by the act. The fact that Hamiter subsequently released his claim for the proceeds of the cotton does not establish the right of Mrs. Trigg's administrator thereto. It may be that the Government holds the proceeds of this cotton in trust for some one; if so, then that person must prove ownership; the law so provides. The fact that Hamiter disclaimed, after making claim, establishes ownership in no one else. A *bona fide* owner may release; this does not free another claimant from the burden of establishing title. The record in this case shows no ownership in claimant proven or found. The petition was necessarily dismissed by the Court of Claims, and its judgment in so doing should be affirmed.

Respectfully submitted.

FRANK DAVIS, Jr.,

Assistant Attorney General.

NOVEMBER, 1920.